Comment Letter I134

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VIA FACSIMILE AND MAIL (916) 322-0827

California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Comments of the Luckhardt Family on the Draft Program Environmental Impact Report/Environmental Impact Statement for the Proposed California High-Speed Train System

Ladies & Gentlemen:

This letter provides the comments of the Luckhardt family, which include Charles E. Luckhardt, Jr., John D. Luckhardt, Charles E. Luckhardt, III, and Jane E. Luckhardt, on the Draft Program Environmental Impact Report/Environmental Impact Statement for the Proposed High-Speed Train System ("Draft EIR/EIS"). These comments are timely filed prior to the close of the extended public comment period concluding on August 31, 2004.

Charles Luckhardt, Sr. purchased property in the San Antone Valley in the 1930s. The Luckhardt family currently owns approximately 1200 acres in the San Antone Valley near the Jump Off Creek (the "Ranch"). The Ranch includes low mountains with brush and valleys with grassland, trees, creeks and ponds. The Ranch is primarily in a natural state. The property has two dwelling units in two separate locations and dirt roads provide access to the houses and different areas of the property. Other developments on the Ranch are ponds, small outbuildings and small concrete drinking troughs around springs for cattle. The entire property is not fenced and nearby cattle ranchers run cattle on sections of the Ranch. The valley contains one county road running down the center of the valley.

The Luckhardt Family is supportive of improvements in travel options for Californians and would like to support a High-Speed Train. Unfortunately, the Draft EIR/EIS fails to provide the necessary studies and analysis to provide a full and complete evaluation of the impacts of this proposal. The Luckhardt Family is also disappointed that without any real evaluation or consideration the California High-Speed Rail Authority and the Federal Railroad Administration (collectively referred to as the "Authority") dropped the Altamont Pass alignment, which would provide superior service between existing commute areas in the Northern San Joaquin Valley and the Bay Area along an existing transportation corridor. I134-1

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The proposed Northern Tunnel through the Diablo Range alignment from Merced to San Jose would cross the Ranch and divide the valley where the Ranch is located. Since the Ranch is largely undisturbed rangeland within a valley that is also largely undisturbed, the Luckhardt Family is concerned about the environmental impacts of adding a long linear feature to this valley. The High-Speed Train corridor would significantly impact the natural environment of the valley and significantly impact its inhabitants both human and animal. Unfortunately, the Draft EIR/EIS does not address the environmental impacts of the High-Speed Train at even a basic level of detail with which a decision maker could make an informed decision on the project let alone a decision between alignment options. The project itself is not adequately defined and the screening of environmental impacts included in the Draft EIR/EIS does not even rise to the level at which it could be called an environmental analysis. Where and how will animals be able to cross the tracks? What access will the Authority provide for ranches that are split by the tracks? Since stream flooding is common in the spring, will all crossings for animals and humans be at or above grade? Will firefighters have adequate access to both sides of the track? How will the noise from the train impact animal behavior in previously quiet areas? I134-1 cont.

The Draft EIR/EIS attempts to use a tiered approach to avoid addressing the environmental impacts of this project. If the Draft EIR/EIS were only evaluating whether such a High-Speed Train would be a good idea for California, maybe a cursory review of impacts like that included in this document would be sufficient. But, since this document attempts to make decisions on the alignment of the train, the analysis is woefully inadequate.

1. Summary of Concerns

As further described below, the Luckhardt family has concerns about the Draft EIR/EIS that need to be addressed prior to completing the environmental review of the proposed High-Speed Train System.

- The Authority has inhibited the Public's ability to comment on the Draft EIR/EIS by only providing the document in electronic form. I134-2
- The Draft EIR/EIS' environmental analysis is inadequate and any decisions based thereon would be arbitrary and capricious. I134-3
- The Draft EIR/EIS does not include specific mitigation measures or performance standards to mitigate significant impacts. I134-4
- The Authority should include a thorough analysis of the Altamont Pass alternative. I134-5
- The Draft EIR/EIS' discussion of growth inducing impacts lacks supporting analysis. I134-6
- The air quality analysis is out of date. I134-7

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- The noise analysis does not address quiet rural areas. I134-8

2. The Draft EIR/EIS Is Not Accessible to the Public

Despite requests by the Luckhardt family for a hard copy of the Draft EIR/EIS in person and over the phone to the California High-Speed Rail Authority ("Authority"), we were only able to obtain a compact disk ("CD") of the document. The Draft EIR/EIS fills two 4-inch binders without printing all of the appendices. It is virtually impossible to read a document of this length on a computer screen. We were instructed by staff at the Authority to take the CD to Kinkos and have it printed. Taking the document to Kinkos to have it printed poses a variety of issues. The first issue is that the disk is set up so that each section is in a different file. Therefore, the entire document cannot be sent to print at one time. In addition, there are a variety of maps and figures in the document that are unreadable in black and white. These have not been set out or identified in any way so that one could print the rest of the document in black and white and easily get maps and figures printed in color. Although most of the figures are in files at the conclusion of each chapter, the chapters themselves may also have color figures within the text of the chapter. (Draft EIR/EIS Chapter 5.) Thus, a member of the public either has to go through and look at each individual file for sections that can be printed in black and white and figures that need to be printed in color, have the entire document printed in black and white wherein the figures are unreadable, or have the entire document printed in color wherein the figures are readable but the cost is excessive.

The Authority states the Draft EIR/EIS is an effort to comply with the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). (Draft EIR/EIS at F-1; CEQA Cal. Publ. Res. §§ 21000 et seq.; NEPA 42 U.S.C. §§ 4321, et seq.) "The basic purposes of CEQA are to: (1) inform governmental decision-makers and the *public* about the potential significant environmental impacts" of proposed activities. (14 C.C.R. § 15002[a]]1] *emphasis added.*) In accordance with NEPA, agencies shall make environmental impact statements available to the public. (40 C.F.R. § 1506.6[f].) In making any record available to a person "an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." (5 U.S.C. § 552[a][3][B].) The Authority could reproduce and have available to the public copies of the Draft EIR/EIS for the actual cost of reproduction. The cost of reproduction for the Authority for a number of the documents would clearly be less expensive than the cost to each individual member of the public who takes a disk to a copy house to print one copy. The Authority could also have the document printed so that only those pages with color graphics are printed in color. By providing only a disk, the Authority is clearly violating the intent and requirements of both CEQA and NEPA to provide the public an opportunity to participate in the environmental review of this project. While it is helpful to have information available on websites and available by electronic means because they can be accessed from computers at any time of day, large documents such as the Draft EIR/EIS should also be available in hard copy so that members of the public who are interested can review and comment on the entire document. I134-9

3. The Level of Analysis in the Draft EIR/EIS is Insufficient

The Draft EIR/EIS declares that it is a program-level or first tier environmental document. (DEIR/EIS at F-1.) As a result of that declaration, the document states that the potential environmental impacts of the proposed High-Speed Train system are evaluated at a conceptual and planning level. (*Id.*) This conceptual and planning level of analysis is obvious and consistent throughout the document. The courts have interpreted tiering as "a process by which agencies can adopt programs, plans, policies or ordinances with EIRs focusing on a single 'big picture,' and can then use streamlined CEQA review for individual projects." (*Koster v. County of San Joaquin* [Third District 1996] 47 Cal.App.4th 29; Cal. Res. Code Section 21068.5) Similarly NEPA provides for tiering to evaluate a program environmental impact statement to a second analysis of lesser scope or site-specific statement. (40 C.F.R. Section 1508.28.) These regulations have been interpreted by the Council on Environmental Quality (CEQ) to be used when the programmatic level EIS would be followed by a site-specific or project-specific EIS. (Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, at 24 C.) I134-10

Unfortunately with the Draft EIR/EIS, the Authority will be making specific routing decisions for the High-Speed Train. In fact, the minimal environmental analysis provided supposedly includes a specific route and 100 feet on either side of the alignment. (Draft EIR/EIS at 6-1.) Therefore, although the Authority has specific alignments for each proposed segment, the Draft EIR/EIS provides only a scant description of the overall impacts of each of the alignments. The next step of a site specific analysis would then potentially move the alignment to avoid, for example, a small wetland but would not be able to move the alignment from one valley to the next to avoid environmental impacts. The Draft EIR/EIS provides extremely little analysis in the form of short descriptions, tables and checklists in the appendices but no real evaluation of the resources impacted by each of the different routes or the potential environmental impacts from the alignment through those areas. The entire document does not include scientific studies or ground level surveys of existing conditions that would allow a reasoned analysis of the potential environmental impacts of the High-Speed Train. Therefore, the Authority is making major decisions on route locations with inadequate environmental analysis upon which to base those decisions. Therefore, any decision on alignments based upon the minimal analysis presented in the Draft EIR/EIS would be arbitrary and capricious. (5 USC § 706.)

(a) The Project Description Fails to Provide a Complete Description of the High-Speed Train

The Draft EIR/EIS does not include even a rudimentary description of the project in a complete and concise location in the document. Nowhere in the document is the actual configuration of the track, required right-of-way, or fencing described. The reader can only get a general feel of the project from the photo simulations provided in Chapter 3.9 where the impacts on the natural environment are striking as demonstrated by Figures 3.9-15 and 3.9-18B. For elevated sections of the track, how high will the track rise above existing roads and other obstacles? Nowhere in the document are the construction techniques described including construction corridor width, I134-11

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equipment required, staging areas, etc. The Draft EIR/EIS does not meet the project description requirements of CEQA to provide the "project's technical, economic, and environmental characteristics." (See 14 CCR § 15124[c].) The document also fails to include a list of the agencies expected to use the Draft EIR/EIS in their decision making. (14 CCR § 15124[d][1][A].)

I134-11 cont.

(b) The Screening Level Analysis of Alignment Options is Insufficient to Support a Selection Between the Options Presented

The specific alignment of concern to the Luckhardt Family is the Northern Tunnel route through the Diablo Range. The document provides a scant seven pages of a table to address the differences between five different alignments between the cities of San Jose and Merced. The shortest alignment is 86 miles long and the longest alignment is 117 miles long. (Draft EIR/EIS at 6-10.) The discussion of environmental impacts is a scant two or three sentences per subject area for a minimum of 86 linear miles of impact. For a minimum of 86 linear miles the analysis is a table with only phrases describing the impacts. This minimal review hardly provides the environmental analysis needed to make a decision on an alignment.

The minimal screening evaluation conducted to review the impacts of these alignments is demonstrated by the land use discussion, which states, "no potential impacts" to communities for the Northern Tunnel route. (Draft EIR/EIS at 6-13.) This three word conclusion fails to mention a large development under construction west of Highway 5 within the alignment. This development has been in the planning process for some time and should have been discovered by the Authority through a request to the local planning department. The Draft EIR/EIS's failure to obtain information on large planned developments in the region reveals the dearth of real analysis conducted on these routes. The document fails to include land use maps and lists of potential projects. One wonders if the preparation team simply hired a plane to fly the route.

I134-12

The biological resources section of the table simply states that the Northern Tunnel route would "potentially impact fewer special-status species than other alignments." (Draft EIR/EIS at 6-15.) This statement is not supported by any study of any kind. The document does not allow a reasoned person to determine whether any one alignment would reduce the impacts to special-status species because no studies have been completed to allow a real evaluation of the alternatives.

The noise section concludes that the Northern Tunnel alignment would have low potential impacts even though this alignment moves through quiet open countryside with low background noise. (Draft EIR/EIS at 6-12.) The proposed project includes 64 trains each weekday between northern and southern California. (Draft EIR/EIS at S-4.) The analysis does not include any noise monitoring of the background levels to determine the amount of impact caused by one alignment in comparison to any other alignment. The document fails to recognize the impact of adding a constant flow of train travel at a level of 64 trains a day creating noise levels between 90 dBA at 100 feet from the track to an area that is otherwise rural and quiet with noise levels probably around the low 30s dBA. (Draft EIR/EIS at Figure 3.4-7; the estimate of noise level in

rural areas is taken from evaluations of projects in rural areas of California and is included only as an estimate to show the relative level of impact of the High-Speed Train in rural areas. Commission Decision, Cosumnes Power Plant Project, Docket No. 01-AFC-19, September 2003 at 125-126.) The trains will pass through these rural areas at a pace of two or three an hour with higher levels during commute times.

I134-12 cont.

A simple summary table of environmental impacts does not support a decision between linear alignments of 86 to 117 miles of High-Speed Train. Any decision on alternatives based upon the minute level of detail provided in the Draft EIR/EIS would be arbitrary and capricious.

(c) The Draft EIR/EIS Does Not Include Specific Mitigation Measures or Significance Determinations

The Authority concludes that the High-Speed Train alternative is the environmentally superior alternative. (Draft EIR/EIS at 7-5.) And yet, the Draft EIR/EIS fails to identify significant environmental impacts and instead uses phrases like "consider sound barriers along noise sensitive corridors". (Draft EIR/EIS at 7-9.) Which corridors? How much benefit? Where topography raises the receptor or the High-Speed Train, will the barriers still be effective? What about impacts to wildlife? Will noise impacts to wildlife be considered noise sensitive corridors? The specific subject area analyses focus on potential mitigation strategies but do not provide any specific actions that will be taken by the Authority to address these impacts. (*See* Draft EIR/EIS at 3.4-23 to 3.4-25.) This approach violates the mitigation requirements of CEQA that 1) any mitigation include a performance standard, and 2) agencies not allow the physical change that would cause the impact to occur without satisfying the performance standard. (14 CCR § 15126.4.) The mitigation proposed in the Draft EIR/EIS in Table 7.3-1 does not meet either of these requirements.

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Furthermore, the determinations of significance included in Table 7.3-1 are similarly flawed. (Draft EIR/EIS at 7-6 to 7-13.) The determinations of significance depend upon the unspecified mitigation measures discussed above and use terms like "potentially less than significant". (Draft EIR/EIS at 7-8.) This description does not provide the decision maker with adequate information about whether there will or will not be a significant impact.

4. The Authority Should Not Have Eliminated the Altamont Pass Alternative

The alternative route discussions are inconsistent and contradictory. In discussing the Altamont Pass option the Draft EIR/EIS dismisses the improved service from the Northern San Joaquin Valley to San Francisco that would occur across Altamont Pass because, "this represents a relatively short distance market, which holds less revenue potential and is more appropriately served by improvements to the existing commuter rail service, the Altamont Commuter Express (ACE)." (Draft EIR/EIS at 2-38.) Nonetheless, reduced service from San Joaquin Valley to the Bay Area was used as a reason to dismiss the Panoche Pass alternative. (Draft EIR/EIS at 2-35.) Therefore, the Draft EIR/EIS dismisses the Altamont Pass option which would provide improved service from the Central Valley population centers of Sacramento, Stockton and Tracy to the Bay

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Area by claiming that service from the Northern San Joaquin Valley can be better served by the ACE train. And yet, the Draft EIR/EIS dismisses the Panoche Pass option because it does not serve Northern San Joaquin Valley. The Draft EIR/EIS cannot discount improved service to the Northern San Joaquin Valley on one hand for Altamont Pass and use a lack of service to the same area to dismiss the Panoche Pass option.

The route options selected for splitting the train into three different routes at Newark/Fremont makes absolutely no practical sense. A much more obvious routing would be one line south to San Jose and one line north to Oakland. San Francisco could be served either under or over the Bay from Oakland, with a connection to BART in Oakland, or up the Peninsula from San Jose. A two track alternative would reduce the train split from three splits to two as is currently the plan from north of San Jose. If an option through San Jose to San Francisco or from Oakland to San Francisco using BART is selected, impacts to the Bay are eliminated. Altamont Pass provides the added benefit of following existing transportation corridors and avoiding the creation of a new transportation corridor from the San Joaquin Valley to the Santa Clara Valley. The Altamont Pass alignment is the only route between San Jose and Merced that meets the Authority's own goal of maximizing the use of existing transportation corridors. (Draft EIR/EIS at 5-2.) Thus, the Altamont Pass alignment would minimize impacts to new and as yet undisturbed property and natural areas.

I134-14 cont.

5. The Subject Area Analyses are Insufficient

Each subject area analysis is only described at a screening level. None of these specific subject area sections are sufficient. The Luckhardt Family has included detailed comments on the air quality and noise sections of the document as a demonstration of the problems that occur in the other sections. However, we do want to point out that the biological resources , cultural resources, land use and visual resources discussions do not provide specific survey level detail that would allow a selection of alignment alternatives between Merced and San Jose. Each section includes a short set of conclusions about the various alignment options without any supporting studies and seems to rely upon the amount of land disturbed or cultural sites recorded as a determinate for impacts. The screening level of analysis presented in the biological resources, cultural resources, land use and visual resources discussions is insufficient for an alignment decision of the magnitude contemplated by the Draft EIR/EIS.

I134-15

(a) The Air Quality Analysis is Now Out of Date Due to the New Federal $PM_{2.5}$ Standard and the Severe Non-Attainment Status of the San Joaquin Valley Air Basin

The air quality analysis does not include $PM_{2.5}$. $PM_{2.5}$ is now regulated separately from PM_{10}. The Draft EIR/EIS analysis does not reflect the impact of the different alternatives on $PM_{2.5}$. The analysis also does not include a discussion of the current status of the San Joaquin Valley Air Basin as "severe". Both $PM_{2.5}$ impacts and the severe status of the San Joaquin Valley Air Basin need to be included in the Draft EIR/EIS.

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The Air Quality discussions of both the Sacramento Valley Air Basin and the San Joaquin Valley Air Basin attribute the growth in PM_{10} from vehicles as primarily fugitive dust from paved and unpaved roads (draft EIR/EIS at 3.3-12 to 3.3-13.) Just from the casual eye, one can imagine the differences in PM_{10} generation from a dirt road and a paved road. Although the High-Speed Train may reduce the numbers of cars on the freeways between major cities, it could not conceivably be considered to reduce vehicle miles traveled along unpaved roads in either the Sacramento or San Joaquin Valley Air Basins. Unpaved roads are typically driveways and smaller county roads serving households or outlying areas. None of these areas or vehicle miles traveled would be reduced by the High-Speed Train. People taking the High-Speed Train would still need to get from their homes along dirt driveways and dirt-county roads out to the main roads and major metropolitan areas to access the High-Speed Train. Since the information provided in the Draft EIR/EIS does not split out different sources of PM_{10}, it is impossible to know whether the High-Speed Train would truly create any PM_{10} reductions in the Sacramento or San Joaquin Valley Air Basins. (Draft EIR/EIS Tables 3.3-4, 3.3-5, 3.3-6, 3.3-7 and 3.3-9.)

In regards to CO, Table 3.3-9, which indicates that there are no values available for CO impacts under the modal alternative by county, finds potential modal impacts by County. (Draft EIR/EIS at Table 3.3-9.) One wonders how the authority was able to come to conclusions under the potential modal impacts section showing the amount of change from the no-project alternative when the only values that are given for CO are on a state-wide basis.

I134-16 cont.

The High-Speed Train alternative comparison of air quality impacts presents a very skewed view of the air quality improvements claimed by the High-Speed Train alternative. The High-Speed Train alternative correctly includes emissions from power generated from power plants needed to provide the electricity to support the High-Speed Train in statewide emissions. But, the power plant emissions increases are not included in the emissions summary by air basin. (Draft EIR/EIS Table 3.3-9.) Therefore, all of the individual air basin emissions reductions shown in Table 3.3-9 only include the reductions from the High-Speed Train but none of the increases caused by the High-Speed Train alternative. For example, the San Francisco Bay Area shows a benefit of 1.8% for CO whereas the statewide benefit for CO is less than 1%. The PM_{10} benefit for the San Joaquin Valley Air Basin is shown as 3.06%, whereas the statewide impact, which includes the power plant emissions, is 0.78%. The ozone pre-curser TOG is listed as a benefit of 2.38% for the San Joaquin Valley Air Basin whereas the statewide benefit is 0.64%. Thus, the air quality benefits are highly skewed in favor of the High-Speed Train in the individual air basin discussion where increases in emissions to provide power to the High-Speed Train have been omitted. It is important also to note that this table includes PM_{10} impacts that have not been delineated between unpaved road dust and other emissions sources. Therefore, simply reducing the PM_{10} emissions by a reduction in vehicle miles traveled further skews the analysis in favor of the High-Speed Train alternative. Driving along dirt roads would be necessary for the individuals to reach any of the transportation options and would not decrease with the High-Speed Train alternative.

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(b) The Noise Section Fails to Provide Sufficient Analysis to Support a Conclusion on Noise Impacts and Severely Understates the Impacts to Quiet Rural Areas

The Draft EIR/EIS provides one general number for ambient noise levels in rural areas of L_{eq} of 40 dBA in Henry Coe Park. (Draft EIR/EIS at 3.4-13.) No information is provided regarding how the Authority came to determine this noise level for Henry Coe. No information is provided for the location of the noise monitor or the length of time over which the monitor operated. Did the analysis include nighttime hours? How close was the monitor placed to highway 152? What were the noise levels over time? Where there any single event occurrences that impacted the monitor? How often were the monitors checked? What were the technician's observations? There is no way to determine the accuracy of the measurements from the information provided. The Luckhardt Family notes that the noise levels along the Northern Tunnel route would be substantially lower than the levels measured for Henry Coe because there are no major highways through the area contemplated for the Northern Tunnel alignment. (Noise measurements conducted in rural areas as part of the California Energy Commission power plant siting proceedings have found rural area noise levels in similar settings to be in the low 30s L_{90}. *See* Commission Decision, Cosumnes Power Plan Project, Docket No. 01-AFC-19, at 125-126, Sept. 2003.)

I134-17

Furthermore, there is only one measurement provided over many miles of High-Speed train alignment. One noise level measurement does not provide sufficient detail to describe the conditions along miles of High-Speed Train where the noise levels are very high. Furthermore, the noise assessment uses L_{eq} and L_{dn} and a distance of 1000 feet from the track to determine the additional sound impact. These measurement types, which tend to reduce the impact of noise from periodic events like passing trains, and distance of 1000 feet are referenced to a Federal Railroad Administration ("FRA") manual that seems to refer only to impacts on people within buildings. (Draft EIS/EIR at 3.4-C-1, referencing U.S. Department of Transportation, Federal Railroad Administration, "High Speed Ground Transportation Noise and Vibration Impact Assessment," Washington DC, 1998 and at 3.4-C-2 and Figure 3.4-9. The Luckhardt family notes that we have been unable to determine that the referenced FRA manual has been adopted by the FRA as a regulation under the Administrative Procedures Act ["APA"]. If not adopted under the requirements of the APA, it is an underground regulation and cannot be used to provide justification for using the methodology provided in the manual. The Luckhardt Family further finds the FRA manual sections included in the Draft EIR/EIS to be inapplicable for rural applications due to the fact the impact chart does not include areas with ambient noise levels below 40 dBA. Therefore, we infer that the FRA manual was not created to address impacts from high-speed rail installations in rural environments. [The impact levels start at an existing noise exposure level of 40 dBA which exceeds the noise levels found in typical rural environments, Draft EIR/EIS at 3.4-D-2.]) In addition, the manual and the evaluation presented in the Draft EIR/EIS fail to address the impacts of the High-Speed Train traveling through a valley such as that contemplated by the Northern Tunnel alignment where the sound will echo.

The noise section does not contain any analysis of the real impacts on rural areas or attempt to comply with the CEQA significance criteria. The analysis determines a low noise impact on rural areas from the High-Speed Train. (Draft EIR/EIS at 3.4-10.) This conclusion flies in the face of the CEQA significance criteria selected for this Draft EIR/EIS, "a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project." (See Draft EIR/EIS at 7-4, selecting the environmental checklist for CEQA significance criteria.) The impacts section provides only the following conclusion for wilderness areas, the High-Speed Train "would introduce new noise sources along corridors through wilderness areas where the alignment is at grade or elevated." (Draft EIR/EIS at 3.4-17.) This short description hardly provides an analysis of the impacts to areas such as the Northern Tunnel alignment. Nor does it provide any guidance on the potential for significant increases in the ambient noise level in these quiet rural areas.

I134-17 cont.

6. The Discussion of Grown Inducing Impacts Lacks the Underlying Analysis and Provides Only Conclusions.

The selected analysis period of 2035 is insufficient to give a complete picture of the impacts of the High-Speed Train. (Draft EIR/EIS at 5-5.) Although the year 2035 may provide insight into the impacts of a High-Speed Train after it is in operation, by using only 2035 (approximately 30 years from now) the analysis builds in a whole level of additional uncertainties and margin for error. Since land speculation around the potential High-Speed Train stations has already begun. Growth inducing impacts from the High-Speed Train option would be visible much earlier than 2035. The analysis should include at least one if not two intermediate years closer in time to allow for more accurate discussion of potential growth.

The discussion of financing of the alternatives does not fully address the cost of the High-Speed Train alternative. The initial estimate of $25 billion in costs is expected to be funded through "revenue sources that would not require direct tax increases or significant diversion of general fund revenues." (Draft EIR/EIS at pages 5-8 to 5-9.) The types of revenues described to cover this $25 billion are general obligation bonds, federal grants or loans, airport user fees, passenger facility charges and local funds. The general obligation bond amount is listed at $10 billion. (Draft EIR/EIS at 5-9.) This analysis assumes that over half of the cost of the High-Speed Train system will come from other funding sources. The analysis does not provide the interest rates used or any indication of whether the analysis took into account the current cost for California General Obligation Bonds or if the analysis assumed prior higher bond rating levels. The Draft EIR/EIS states that the modal alternative will decrease employment in part because of the increased taxation and user fees that might be needed to fund its higher initial capital costs. (Draft EIR/EIS at 5-10.) But, when discussing the fundings options for the High-Speed Train, the discussion includes existing airport user fees and state transportation revenue such as gas taxes. (Draft EIR/EIS at 5-9.) Since these existing funding sources are fully utilized at this time, one wonders how the High-Speed Train system expects to receive a large portion of these existing tax and fee sources without resulting in a subsequent impact on existing transportation corridors such as roads and bridges. Diversion of these funds to the High-Speed Train would in

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turn drive higher levels of gas taxes and airport user fees as well as other fees and funding sources. Given the current level of increased fees throughout the State of California from any entity that can increase fees, it seems quite naïve of this document to assume the High-Speed Train alternative could be funded from existing fee sources without a need for additional taxes.

The Draft EIR/EIS notes that estimated project costs have increased for the High-Speed Train alternative from $25 billion to $37 billion and yet, the discussion still assumes that the full $37 billion can be funded from the same funding sources that would have provided the $25 billion without any increase in fees or taxes (Draft EIR/EIS at 5-36.) The higher estimated cost does not include any additional bonding amount over the $10 billion previously stated in the earlier discussion. At this point, the bonding amount is approximately a quarter of the cost of the High-Speed Train alternative. Unless some magical amount of federal funding comes into the High-Speed Train alternative, either an increase in bonding capacity or fees would be required. Given the current level of State of California bonding, additional bonding may impact the State's ability to cover existing expenditures without increasing taxes. Although the current budgeting process seems to have avoided a direct increase in taxes, it has included numerous increases in fees with the current level of funding. Therefore, this analysis seems to greatly overstate the ability of the State of California to fund its share of the cost of the High-Speed Train alternative without increasing fees or taxes. Since the analysis of employment impacts from the High-Speed Train alternative does not include any impacts from increased fees or costs or increased taxes for debt service to the State of California, the analysis highly overstates the benefits of the High-Speed Train alternative.

I134-18 cont.

The most obvious piece of information missing from the growth inducing impact section of the document is a discussion and analysis of the impacts of the location of the stations on land development in relatively undeveloped areas. The document claims that "most of the alignment options would not create meaningful differences in overall urban area size or station-area development density." (Draft EIR/EIS at 5-21.) The discussion goes on to show a growth effect in the Antelope Valley, but fails to recognize the difference in the alignments between the Northern San Joaquin Valley and the Bay Area. Much of the discussion focuses on development in Merced, but fails to note that development patterns will differ dramatically if the project goes through Los Banos and Gilroy with stations in those locations. The Draft EIR/EIS has no discussions of the potential advantages to commuters living currently in Gilroy or Los Banos and commuting to the Bay Area for work or any increase in housing density near these stations.

For those of us living in the Northern San Joaquin Valley, it is absolutely astounding to see the conclusion that is reached in the Draft EIR/EIS that "additional population growth under the HST Alternative is driven by internal job growth (i.e., job growth that occurs in the same county as population growth) relative to initiation of the HST service, rather than by potential population shifts from the Bay Area and Southern California accompanied by long-distance commuting." (Draft EIR/EIS at 5-17.) Given the bedroom community developments in Tracy, Stockton, Los Banos, Woodland, Davis, Sacramento and various other locations in the Northern San Joaquin Valley, this conclusion proves that the analysis performed is inaccurate. The

analysis clearly fails to note the business location advantages of the "brain trust" created in the Bay Area by the concentration of numerous highly recognized educational institutions. The High-Speed Train alternatives will provide access to job centers in the Bay Area from affordable housing areas such as Merced and Los Banos. It is implausible for any analysis of this type of high-speed access to the Bay Area to exclude a detailed discussion of the growth inducing impacts of bedroom communities in the Northern San Joaquin Valley. Furthermore, the discussion in the Draft EIR/EIS simply presents these conclusions and does not provide any of the underlying analysis to indicate why certain industries would locate in locations like Merced as opposed to the Bay Area, and in fact, the document eludes to this bedroom community impact in one location where it states, "in all cases except Merced county, the incremental employment effect is much larger than the incremental population effect." (Draft EIR/EIS at 5-22.)

The document describes in a very general and conclusory way potential advantages to specific areas in proximity to a High-Speed Train station. (Draft EIR/EIS at 5-22.) Numerous references are made to "experiences in other countries". *(Id.)* This general statement is never supported by which countries and which cultures were being evaluated so that the reader could understand whether those impacts would be replicated in the United States with the California dream of each family owning an individual detached residence. Furthermore, in the discussion of land consumed under each of the alternatives, a reference is made to "this calculation" without providing the calculation or the assumptions that were made to reach the conclusion that the High-Speed Train alternative would have less land consumption than any of the other alternatives *(id.)*.

I134-18 cont.

The Draft EIR/EIS does not discuss individual cities or station locations stating that this is simply a first-level analysis; but the document does admit that much of the potential incremental growth will be associated with specific station locations. (Draft EIR/EIS at 5-23.) Since this document does propose to select specific station locations at least within individual cities, it limits the potential review of additional station alternatives. In order for this document to limit review of potential station alternatives, this chapter must include the growth inducing impacts on the towns identified as potentially having a station. This omission is especially glaring due to the admission in the document that those locations with stations will have the highest level of impacts from growth. (Draft EIR/EIS at 5-33.)

Similarly, the discussion of any impacts from electro-magnetic fields on individuals living near stations should also be discussed since the High-Speed Train alternative is expected to increase densities around station locations. Therefore, the two sentences on electro-magnetic frequency and electro-magnetic interference is clearly insufficient to analyze the potential impacts to individuals living in higher densities closer to the train stations. (Draft EIR/EIS at 5-25.)

Comment Letter I134 Continued

7. The Authority Should Not Select the Northern Tunnel Alignment Based Upon the Screening Level Analysis Presented in the Draft EIR/EIS

The Draft EIR/EIS does not provide a sufficient analysis of the environmental impacts of the Merced to San Jose alignment options. Any decision on the appropriate alignment options based upon the Draft EIR/EIS would be arbitrary and capricious. I134-19

Very truly yours,

DOWNEY BRAND LLP

Jane E. Luckhardt

JEL:ln

cc: Charles Luckhardt, Jr.
John D. Luckhardt
Charles Luckhardt, III

Response to Comments of Jane E. Luckhardt, August 31, 2004 (Letter I134)

I134-1

Please see standard response 6.3.1. The level of detail provided is sufficient for a program-level document.

I134-2

Please see response to Comment I134-9.

I134-3

Comment acknowledged. The co-lead agencies believe the Draft EIR/EIS meets or exceeds CEQA and NEPA requirements.

I134-4

Specific mitigation measures and performance standards to mitigate significant impacts are project-specific level of detail.

I134-5

Please see standard response 2.18.1.

I134-6

Please see Chapter 5 of the Program EIR/EIS and the supporting technical report by Cambridge Systematics referenced in the Program EIR/EIS.

I134-7

Please see response to Comment I134-16.

I134-8

Please see response to Comment I134-17.

I134-9

The Authority took reasonable and appropriate steps, given its limited staff and budget resources, to make the Draft Program EIR/EIS widely available to the public, consistent with CEQA and NEPA requirements. Due to the broad public interest in the proposed HST system, the Authority distributed over 1,200 copies of the CD version of the Draft Program EIR/EIS. The Draft Program EIR/EIS was also available for viewing in hard copy at more than 30 public libraries, and it was posted (along with the supporting technical documents) on the Authority's website. The comment refers to a federal code section which does not apply here. Please also see standard response 8.1.16.

I134-10

The co-lead agencies acknowledge the purpose of the Program EIR/EIS to provide sufficient information to support the decisions to be made. In this regard the Co-Lead agencies have determined that more information is required to provide a basis for selecting an alignment option between Merced and the San Francisco Bay Area. Please see standard response 3.15.7 regarding anticipated future reviews of alignment options between the Central Valley and the Bay area and standard response 3.15.2 regarding the more general level of review in this PEIR/S and the more detailed impact reviews anticipated under the project-level, Tier 2 studies.

At the programmatic level of environmental review the analysis is focused on identifying and highlighting areas of potential impact to be avoided and/or considered further during subsequent project level environmental review. If this proposed project is carried to a project level of environmental review, preliminary engineering will be conducted allowing for a greater precision in the location of the proposed HST facilities and their associated configuration/design. The project level analysis will provide a more detailed analysis of potential direct and indirect affects, based on specific design attributes. The detail of engineering associated with the project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential impacts.

The development of HST alignment and station options for the Draft Program EIR/EIS included an extensive screening analysis in which

many alignment and station options were eliminated from further consideration due to higher potential for environmental impacts. The remaining alignment and station options were analyzed in the Program EIR/EIS to identify and compare potential impacts, which resulted in the identification of a preferred system of alignment and station options. In this process many additional alignment and station options were also eliminated from further consideration (e.g., the northern mountain crossing alignment options that traversed Henry Coe State Park, See Standard Response 6.3.1). The subsequent preliminary engineering and project level environmental review will provide further opportunities to avoid and minimize the potential effects to the environment, as more specificity is defined for proposed alignments and facilities.

I134-11

The HST Alternative is described in Section 2.7 of the Program EIR/EIS. Chapter 6A also describes the preferred HST system of alignment and station options for consideration in subsequent project level environmental review. Section 3.18 discusses construction methods and potential impacts in general for the statewide system.

I134-12

Please see standard response 6.3.1.

I134-13 (and I134-17)

The Authority and FRA believe that this screening distance of 900 feet is sufficient to estimate the number and extent of potentially noise affected parks and recreation areas at a program level of analysis. The purpose of the screening analysis undertaken is to provide a measure of noise-sensitive receivers that are close enough to the proposed alignments for noise impact to be possible. Specific HST noise levels will be determined during the project level noise assessment.

The screening procedure provides distances from the center of a corridor to define an area enclosed by parallel contours. However, noise and vibration impact criteria relate to the number of people who are likely to be annoyed by activity interference. The areas defined by the screening distances along the alignments, together with available US census based population density information in GIS format, provide a measure of the number of people impacted by HST and the other alternatives. The number of people impacted is a parameter for comparing the alternatives. A tabulation of people alone is not the only indicator for noise and vibration impacts – noise-sensitive institutional and multi-family land uses must also be factored in to the assessment. This information is provided in the regional technical reports. Future project level analysis would provide detailed inventories of sensitive land uses.

FRA's noise impact criteria are not based on a single Ldn value of 65 dBA; instead, the criteria are ambient-based, which means they include effects of relative changes in ambient noise due to a project. The criteria are derived from the expected human annoyance from noise exposure established by the US EPA, with consideration of levels "requisite to protect public health and welfare with an adequate margin of safety" as well as the minimum differences in levels required for a change in community reaction. The development of the criteria is explained in Appendix A of the FRA guidance manual.

At the program level, however, a more general rating system is appropriate in order to compare the potential severity of noise and vibration impacts and the need for mitigation among system alternatives and alternative HST corridors. The impact rating methodology provides a comparison of the lengths of corridor where mitigation may be required. This analytic approach provides information sufficient to estimate the relative potential for noise impact as well as potential mitigation costs associated with each alignment option being compared. The Authority followed FRA guidance when the analysis was initiated that specified a screening distance of 900 feet for new rail corridors in rural areas.

Please see Standard Response 3.4.1 regarding potential noise impacts on wildlife.

I134-14

Please see standard response 2.18.1.

I134-15

See Response I134-10.

I134-16

Regarding PM2.5: the air quality analysis for Draft EIR/EIS was conducted in 2003 – more than a year before the U.S. Environmental Protection Agency designated PM2.5 non-attainment areas. These designations were based on a review of three full years of monitored data, which were not fully compiled at the time of this analysis. Three years of data were required to determine compliance with the PM2.5 standards.

The air quality chapters provided in the EIS/EIS are based on the data and information that were available at the time that the analyses were conducted.

Regarding PM10 reductions associated with reduced vehicle miles of travel (VMT): changes in PM10 emissions in each air basin were estimated by calculating the ratio of the estimated emissions generated in an air basin (by the California Air Resources Board (CARB)) by the CARB-estimated on-road mobile VMT in that basin, and then multiplying the estimated changes in VMT associated with the HSR by this ratio.

The on-road mobile emissions used in the HSR estimates refer only to tailpipe emissions. Road dust emission from both paved and unpaved roadways is classified as an area-wide source by CARB. Reductions to road dust emissions were not included in the HSR analysis. The emission reductions were therefore not overestimated since the emissions from unpaved roads were not decreased due to the HSR.

Regarding changes in CO emissions shown on Table 3.3-9: changes in CO emissions shown on Table 3.3-9 are both on a state-wide and an air basin basis.

Only CO2 (not CO) was considered on a state-wide basis only. The reason for this is that CO2 is not a "criteria" pollutant that is of local public health concern. CO2 is a greenhouse gas pollutant that is of concern principally as it may contribute in some way to global warming.

As such, in order to show how changes in CO2 emissions as a result of the HSR alternatives might affect global warming, only overall state-wide changes were provided.

Regarding power plant emission estimates associated with HSR emissions: increases in emissions from power plant operations as a result of increased HSR power usage were estimated on a statewide basis. These estimates were made using statewide data on the different sources of fuel used to generate this energy (i.e., natural gas, oil, nuclear, hydroelectric, wind power, etc.). This information, however, cannot be compiled by air basin because the energy produced by an individual power plant goes into the region's power grid, and it is the grid that supplies energy to individual users. There is no way to accurately estimate which power plant supplies energy to a specific user – even if a facility are located adjacent to a user.

I134-17

Please see standard response 3.4.1.

I134-18

The growth inducement analysis was conducted for 2020 and 2035. The technical report on economic growth effects provided detailed results for both analysis years. The Draft Program EIR/EIS presented results for 2035 since these results indicated higher potential growth inducement than 2020. Also, year 2035 results reflected a longer time span from system implementation, allowing more time for the travel time, cost and accessibility benefits to work through the economy. The HST system was assumed to open in about 2017, so 2020 is an appropriate initial analysis year.

The growth inducement analysis did not make any specific assumptions regarding bond interest rates or rating level. Section

5.3.2 of the Draft Program EIR/EIS fully discloses all assumptions that were made regarding project financing, including an indication that current costs for California's general obligation bonds were considered in preparing the financing assumptions. Bond interest rates and rating levels are not directly relevant to the growth inducement analysis. At the time this analysis was undertaken, the annual debt service on a $10 billion bond was within the range of the State's historical and future bonding patterns.

The co-lead agencies respectfully disagree with the assertion that inconsistent funding assumptions were developed for the Modal and HST Alternatives. As noted on Pages 5-9 and 5-10 of the Draft Program EIR/EIS, the first $25 billion in capital costs for the Modal and HST Alternatives were assumed to come from the same existing sources. The Draft Program EIR/EIS lists of number of possible funding sources, and does not assume that specific amounts will be raised from any source. As noted by the commenter, it is possible that some funding sources such as state transportation revenues and airport user fees might be fully utilized in the near-term. Nonetheless, the analysis does not assume that "a large portion of these existing tax and fee sources" will be diverted to an HST system, so near-term utilization does not affect the analysis results. Furthermore, Section 5.5.3 of the Draft Program EIR/EIS presents a sensitivity analysis of project cost and funding assumptions. Results from the sensitivity analysis indicate that even if the entire $37 billion capital cost were funded from increases in state taxes, the HST Alternative would still lead to a net statewide increase in jobs (409,000) and people (608,000) over the No-Project Alternative.

The majority of proposed HST station sites are in areas that are currently urbanized, and none of the preferred station locations are in undeveloped areas. The Draft Program EIR/EIS directly analyzed the differential effects of locating HST stations in rural areas versus urbanized areas. Section 5.3.5 of the Draft Program EIR/EIS summarizes potential effects of shifting the station location to outlying and rural areas, and several portions of Section 5.4 provide detailed quantification of the potential indirect impacts of locating HST stations in outlying areas. Further detail on the growth impacts of outlying stations is presented in Sections 4.2 and 5.2 of the technical report on economic growth effects.

The EIR/EIS analysis indicates that HST station locations, rather than potential HST alignments, create the actual accessibility benefits of the HST system. HST stations, not alignments, create the potential for induced growth effects and indirect impacts, if any. Remaining station location sites in the Central Valley are either currently urbanized or will be urbanized even in the absence of HST. The commenter's statement regarding the potential for rural stations to redirect growth and development away from urban areas was reflected in the Draft Program EIR/EIS. In particular the last sentence in Section 5.3.5 on Page 5-21 states: {t]he analysis suggests an advantage, both in terms of potential HST ridership inducement and growth control, with locating HST stations in or near the downtown areas instead of in suburban or undeveloped areas. Also, several portions of Section 5.4 of the Program EIR/EIS provide detailed quantification of the potential indirect impacts of locating HST stations in outlying areas.

Please see standard response 5.2.6 for issues related to commuters currently living in Gilroy or Los Banos. The Authority did not include a potential station at Los Banos as part of the preferred HST alignment and station locations, please see standard response 6.11.1 and standard response 6.3.1.

The statement related to "additional population growth under the HST Alternative..." was in reference to the increment of population and employment induced by the HST Alternative, not the total increase from existing conditions. The co-lead agencies acknowledge the commenter's contention that many residents of communities in the Northern San Joaquin Valley commute to Bay Area jobs and will continue to do so in the future. The analysis and results for each system alternative account for this reality. Please see the extensive discussions of long-distance commuting in standard response 5.2.4 and standard response 5.2.5.

Section 5.3.1 of the Draft Program EIR/EIS described the analysis methodologies and the factors that would lead to business expansion

in an area served by the HST Alternative. More detailed information is provided in Section 3 of the technical report on economic growth effects. The text quoted by the commenter (…the incremental employment effect is much larger than the incremental population effect…) documents the analysis findings that the HST Alternative will not create a widespread "bedroom community impact."

Information on development experience around HST stations in other cities was detailed in Section 3.3 of the technical report on economic growth effects. This potential for growth concentration was directly incorporated into the induced growth and indirect impacts analysis at a level appropriate to a program-level EIR/EIS.

The term "this calculation" cited by the commenter relates to the statistic described in the prior sentence on Page 5-22. The co-lead agencies have revised the text in the Final Program EIR/EIS from "calculation" to "summary statistic" in order to make the link to the prior sentence more explicit.

The co-lead agencies respectfully disagree with the commenter's contention that the Draft Program EIR/EIS does not discuss individual cities or station locations, or that the analysis results are insufficient for differentiating between alternative station locations within a community. Each county with a potential HST station site was individually analyzed. Also separate analyses were performed for different HST alignment and station options, and were reported in Section 5.3.5 of the Draft Program EIR/EIS and Sections 4.2 and 5.2 of the technical report on economic growth effects. Also, it is important to note that localized site-specific impacts and potential mitigations of station design options will be assessed in the project level analysis when potential station sites are considered in detail and when more detailed information about station access patterns and potential roadway modifications will be known. The design detail and analysis tools needed to assess these issues are neither available nor necessary for differentiating between statewide system alternatives at a program-level.

The co-lead agencies respectfully disagree with the commenter's contention that the Draft Program EIR/EIS states that "those locations with stations will have the highest level of impacts from growth." While additional economic growth would be expected in close proximity to stations, results of analysis presented in Section 5 of the Program EIR/EIS do not identify any significant impacts from the indirect effects of growth inducement at the program level of analysis. In part this result is due to the strategy of locating stations at urban centers that are already developed in order to reduce or avoid potential impacts.

I134-19

Please see standard response 6.3.1.